

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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WASTE MANAGEMENT OF NEW	:
JERSEY, INC.	:
	:
Plaintiff,	:
	:
v.	:
	:
TEAMSTERS-EMPLOYERS LOCAL 945	:
PENSION FUND	:
	:
and	:
	:
TRUSTEES OF TEAMSTERS-	:
EMPLOYERS LOCAL 945 PENSION	:
FUND	:
	:
Defendants.	:
-----X	

Case No. 2:10-CV-03984-FSH-PS

**DEFENDANTS' REPLY BRIEF ON THE ISSUE OF THE COLLATERAL  
ESTOPPEL EFFECT OF THE DELINQUENT CONTRIBUTIONS  
ARBITRATION ON THE WITHDRAWAL LIABILITY ARBITRATION**

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Pursuant to Paragraphs 4 and 5 of the Order of the Court dated December 20, 2010, Defendants, Teamsters-Employers Local 945 Pension Fund (the “Fund”) and its Trustees (the “Trustees”), by and through their attorneys, Schulte Roth & Zabel LLP and Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., respectfully submit this Reply Brief on the issue of the collateral estoppel effect of the delinquent contributions arbitration on the withdrawal liability arbitration.<sup>1</sup>

### **PRELIMINARY STATEMENT**

The sole issue remaining in the instant action is whether this Court will order that the factual findings of Arbitrator Davis in the Delinquent Contributions Arbitration between the Fund and Plaintiff, Waste Management of New Jersey, Inc. (“Waste Management”), shall have a collateral estoppel effect on the arbitrator in any potential subsequent Withdrawal Liability Arbitration. As set forth in Defendants’ opening brief, under well-established precedent, the issue of whether to give collateral estoppel effect is a procedural question solely within the discretion of the subsequent arbitrator, not the Court. Contrary to Waste

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<sup>1</sup> Defendants hereby incorporate by reference all facts contained in Defendants’ Memorandum of Law in Opposition to Plaintiff’s Motion for a Temporary Restraining Order and Preliminary Injunction to Enjoin Arbitration Schedule for September 29, 2010 [Docket No. 24] and in Defendants’ Brief on the Issue of the Collateral Estoppel Effect of the Delinquent Contributions Arbitration on the Withdrawal Liability Arbitration [Docket No. 43] (“CE Op. Br.”). Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to such terms in Defendants’ CE Op. Br.

Management's assertion, a ruling by the Court in the Fund's favor will best carry out the statutory mandates of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended by the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"), 29 U.S.C. § 1381 *et seq.*, and federal law governing arbitration.<sup>2</sup>

### **ARGUMENT**

Waste Management erroneously states that the Fund asks the Court to hold that the factual findings of the arbitrator in the Delinquent Contributions Arbitration must have a collateral estoppel effect in a potential subsequent Withdrawal Liability Arbitration. (*See, e.g.*, CE Resp. Br. at 5, 7.) Contrary to Waste Management's misreading of Defendant's opening brief, Defendants request

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<sup>2</sup> The issue of the collateral estoppel effect of the Delinquent Contributions Arbitration on any subsequent Withdrawal Liability Arbitration may be moot, depending on the resolution of the action the Fund recently filed with this Court on February 16, 2011. *See Teamsters-Employers Local 945 Pension Fund, et al. v. Waste Management of New Jersey, Inc.*, Case No. 2:11-CV-00902-FSH-PS. In the new action, the Fund asserts that Waste Management's unilateral initiation of the Withdrawal Liability Arbitration was untimely. *Id.*

Under the "exacting procedures set forth in [MPPAA]," (Response to Defendant's Brief on the Collateral Estoppel Effect of the Delinquent Contributions Arbitration on the Withdrawal Liability Arbitration [Docket No. 45] ("CE Resp. Br.") at 4), if Waste Management failed to timely initiate arbitration, it forfeited its right to challenge, *inter alia*, the Trustees' determination regarding the date of partial withdrawal and the calculation of partial withdrawal liability. *See Bd. of Trs. of Trucking Employees of N. Jersey Welfare Fund, Inc.-Pension Fund v. Kero Leasing Corp.*, 377 F.3d 288, 295 n.5 (3d Cir. 2004) (citing *IUE AFL-CIO Pension Fund v. Barker & Williamson, Inc.*, 788 F.2d 118, 129 (3d Cir. 1986)).

*only* that this Court rule—in accordance with well-established precedent—that the issue of whether to give collateral estoppel effect to an award issued by the arbitrator in the Delinquent Contributions Arbitration is a procedural question solely within the discretion of the arbitrator in a Withdrawal Liability Arbitration, if one occurs. (CE Op. Br. at 10.)<sup>3</sup> Waste Management explicitly admits—that these cases “stand for the proposition that collateral estoppel is usually an issue for a second arbitrator to decide . . . .” (*Id.*)

Contrary to Waste Management’s assertion, permitting the arbitrator in the Withdrawal Liability Arbitration, if any, to decide the collateral estoppel issue would give the best effect to MPPAA’s statutory scheme. Waste Management’s unsupported contention that *Howsam v. Dean Witter Reynolds*, 537 U.S. 79 (2002), and its progeny—which apply the principles of the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* (“FAA”), to private agreements to arbitrate—are inapplicable to statutorily-mandated arbitration under MPPAA is wrong. In fact, the language of MPPAA expressly incorporates the FAA by reference.

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<sup>3</sup> Waste Management suggests incorrectly that the Collateral Estoppel Order was within the scope of relief it requested. (*See, e.g.*, CE Resp. Br. at 4-5, 8.) To the contrary, Waste Management’s Complaint [Docket No. 1] and its Brief in Support of Motion for Temporary Restraining Order and Preliminary Injunction to Enjoin Arbitration Scheduled for September 29, 2010 [Docket No. 21, Attachment 1] asked the Court to enjoin arbitration of the parties’ delinquent contributions dispute under the 2009 Resolution.

Section 4221(b)(3) of ERISA, which was added by the MPPAA, provides:

Any arbitration proceedings under [MPPAA] shall, to the extent consistent with [MPPAA], be conducted in the same manner, subject to the same limitations, carried out with the same powers . . . , and enforced in United States courts as an arbitration proceeding carried out under title 9, United States Code [(the Federal Arbitration Act)].

Section 4221(b)(3) of ERISA, 29 U.S.C. § 1401(b)(3); *see Penske Logistics, LLC v. Freight Drivers & Helpers Local 557 Pension Fund*, 377 Fed. Appx. 147, 149-50 (3rd Cir. 2010) (“Arbitration proceedings mandated by [MPPAA] are governed by the rules in the Federal Arbitration Act (FAA).”).

Waste Management’s implication that the respective intent of MPPAA and the FAA are mutually exclusive is misplaced. (*See, e.g.*, CE Resp. Br. at 10.) *See Penske Logistics*, 377 Fed. Appx. at 149; *Bd. of Trs., Sheet Metal Workers’ Nat’l Pension Fund v. BES Servs., Inc.*, 469 F.3d 369, 375 (4th Cir. 2006) (“[A MPPAA] arbitration proceeding is conducted as any arbitration would be conducted under the Federal Arbitration Act.”); *McDonald v. Centra*, 118 B.R. 903, 922 (D. Md. 1990) (recognizing that Section 4221(b)(3) of ERISA “vest[s] MPPAA arbitrators with the same powers as those conducting proceedings under the FAA”).

The cases interpreting the FAA and holding that issues of procedural arbitrability—such as collateral estoppel—are for the arbitrator to decide—are

“consistent with [MPPAA]” and should not be disregarded by the Court. *See* Section 4221 of ERISA, 29 U.S.C. § 1401(b)(3). “MPPAA requires arbitration . . . of *any dispute* concerning a determination of withdrawal liability, whether the dispute is about a legal or factual matter . . .” *BES Servs., Inc.*, 469 F.3d at 375 (citing Section 4221(a) of ERISA, 29 U.S.C. § 1401(a)). Inherent in the MPPAA arbitrator’s authority to determine factual issues is his or her sole discretion to determine whether to give collateral estoppel effect to a prior arbitrator’s determination of the facts relating to the plan’s determination of withdrawal liability. Indeed, the ruling sought by Waste Management—that the Court is permitted to resolve the collateral estoppel issue—would frustrate the “arbitrate first” principal of MPPAA.

The Court’s ruling in favor of the Fund would place the determination of whether Waste Management is entitled to a “clean slate,” as it requests in its brief, in front of the arbitrator, where it belongs under MPPAA.<sup>4</sup> (CE Resp. Br. at 6, 7.)

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<sup>4</sup> Although the resolution of the end date of Waste Management’s obligation to contribute to the Fund under the 2004 CBA is relevant both in the Delinquent Contributions Arbitration and in any Withdrawal Liability Arbitration, Waste Management incorrectly asserts that it is the “single underlying issue.” (CE Resp. Br. at 2.) Rather, the date of the termination of Waste Management’s obligation to contribute is only one of many issues to be decided in the withdrawal liability dispute.



Accordingly, Defendants ask that the Court give statutory effect to MPPAA and the FAA and not include the Collateral Estoppel Order in the Final Judgment entered in this matter.

**CONCLUSION**

For the reasons set forth herein and in Defendants' opening brief, Defendants respectfully request that the Court rule that the arbitrator in a Withdrawal Liability Arbitration, if one occurs, has the sole discretion to determine whether to consider *de novo* or to give the force of collateral estoppel to the factual findings of the arbitrator in the Delinquent Contributions Arbitration.

Respectfully submitted,

Dated: March 8, 2011

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**CERTIFICATE OF SERVICE**

Melissa E. Flax, of full age and upon her oath, certifies as follows:

On March 8, 2011, the Defendants' Reply Brief On The Issue Of The Collateral Estoppel Effect Of The Delinquent Contributions Arbitration On The Withdrawal Liability Arbitration were filed and served via and ECF electronic mail on Plaintiff's counsel, Frank A. Custode. ([fcustode@littler.com](mailto:fcustode@littler.com)), Jacqueline K. Hall. ([jhall@littler.com](mailto:jhall@littler.com)), Thomas Bender ([TBender@littler.com](mailto:TBender@littler.com)), Susan Hoffman ([SHoffman@littler.com](mailto:SHoffman@littler.com)) and Matthew Hank ([mhank@littler.com](mailto:mhank@littler.com)).

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Dated: March 8, 2011